

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF PUERTO RICO**

UNITED STATES OF AMERICA,

Plaintiff,

Civ. Case No. 12-2039 (GAG)

Vs.

COMMONWEALTH OF PUERTO RICO
and the PUERTO RICO POLICE BUREAU,

Defendants

REPLY TO SPECIAL MASTER INFORMATIVE MOTION

TO THE HONORABLE COURT:

COME NOW, Defendants, through their undersigned attorneys, and very respectfully allege and pray as follows:

1. On December 7, 2020, the Special Master filed before this Honorable Court a motion titled *Informative Motion Regarding Compliance by the Puerto Rico Police Department with the Court-approved COVID-19 Protocol* (Docket No. 1621). The Special Master's motion describes the measures undertaken by the Puerto Rico Police Bureau to protect the members of the force in response to the current Covid-19 Pandemic. The Special Master seeks this Courts approval of several findings of facts and recommendations contained therein.

2. This Court granted the parties until today to submit responses to the Special Master Informative Motion (Docket No. 1622). Set for below is the PRPB's response to the Special Master motion.

3. The Special Master issued several findings of facts premised on its observations and feedback received from several sources. The Special Master also issued 5 recommendations to the Court.

4. In April 2020, this Court approved the PRPB's Covid-19 Protocol. The protocol is aimed to ensure the safety and well-being of the members of the PRPB, including its employees and contractors, and the public from the deleterious effects of the Covid-19 virus. The protocol also attempts to ensure the continuity of PRPB operations in a constrained and challenging environment caused by the Covid-19 Pandemic.

5. Due to the nature of the work carried out by the members of the PRPB, they are exposed to the risk of contracting the Covid-19 virus. Consequently, it is the policy of the PRPB to guarantee its members they can carry out their functions safely and following generally accepted police practices notwithstanding the emergency circumstances caused by Covid-19; this while protecting the constitutional rights of the public it serves, in accordance with the Agreement for Sustainable Reform.

6. It is worth noting the Covid-19 is a worldwide phenomenon. Its effects over the population are just beginning to be understood. The PRPB is mindful of this and, thus, will pursue all necessary steps to ensure the protection of its force and all the residents of Puerto Rico.

7. PRPB appreciates the efforts of the Special Master to further provide leverage to the PRPB in meeting its obligations under the Covid-19 Protocol. Although, generally, the PRPB agrees with the findings reported by the Special Master, the Bureau finds it appropriate to comment on some of the areas referenced therein. The goal is to convey to this Court the actual

situation on the ground and the initiatives pursued by the PRPB to combat the deadly Covid-19 Pandemic.

8. The PRPB acknowledges that 5 members of its members have perished as a result of the Covid-19. The Bureau further concedes that 20 complaints have been filed with the Superintendency of Professional Responsibility (SARP) in connection with the virus.

9. The Special Master states that 14 of the 20 complaints filed with the SARP are related to alleged violations by PRPB personnel of the Governor's Executive Orders (i.e., curfew violations). He also asserts two of the complaints submitted were associated with violations to quarantine requirements. Lastly, the Special Master notes the PRPB "officer was instructed to quarantine but these instructions were allegedly ignore." The Special Master, however, did not reference any official reports to substantiate his findings. It is also worth noting the PRPB did not receive in advance a request for production of information from the Special Master to further evaluate the basis and the circumstances surrounding the filing of the referenced 20 complaints. Notwithstanding this, the PRPB is committed to further evaluate each of the complaints filed, and further report to the Special Master and this Honorable Court all relevant information to further ensure the free flow of timely and accurate information.

10. The Special Master also states "[t]he PRPB did not offer a response to the question on whether or not the PRPB quarantined personnel, once they have been identified as having violated the quarantined order, would be mandated to further quarantine for an extended amount of time consistent with the CDC guidelines." The PRPB respectfully disagrees with this finding. On December 7, 2020, Colonel Clementina Vega, Chief of Office of PRPB Reform, was interviewed by the Office of the Special Master. On that occasion, Colonel Vega advised the Special Master the concerned PRPB member had been specifically instructed by the officer's

supervisor to complete the full period of quarantine (14 days), as per the Covid-19 Protocol in force.

11. The Special Master also claims the PRPB staff medical surgeon is not consistent in deciding if a facility should be sanitized after a potential case of COVID-19 is identified. As an example, he alludes to the PRPB San Sebastian District where 8 members of PRPB tested positive for the virus, but the Bureau never ordered the facility to be closed.

12. It is important to distinguish between sanitizing and closing a facility. A facility can be thoroughly sanitized but remain fully operational after rigorous safety measures have been implemented. In the specific case of the San Sebastian District, attached is a 14-page report prepared by the PRPB on November 17, 2020. The report provides a comprehensive description of the safety measures implemented at the San Sebastian District facility, including the district's patrol vehicles, such as the sanitation of the premises and government equipment by a private government contractor and the Municipality of Moca Emergency Management Office several times during the months of May, October, and November 2020. To protect its personnel and the community, the PRPB distributed protective equipment such as N-95 face masks, face shields, hand sanitizer, hand gloves, anti-bacterial soap, etc. *See*, Exhibit 1. *See also*, report dated November 18, 2020, subscribed by PRPB Captain Eduardo Sanabria-Rodríguez, which further documents preventive efforts to control the spread of the Covid-19 virus, and Decontamination Certification issued on November 18, 2020. *See*, Exhibits 2 & 3. Enclosed herewith is a certification issued on October 28, 2020, which confirms that on that day a private contractor sanitized the San Sebastian Police Station, including offices, restrooms, common areas, the second floor and 12 government patrol vehicles. *See*, Exhibit 4.

13. It is also worth noting the San Sebastian Police Station was actually closed during each decontamination phase. Although the government contractor assured PRPB personnel could gain access to the facility within 15-minutes of the cleansing of the premises, the PRPB maintained the facility closed for a period of 24 hours to further maximize the level of readiness of the force and the protection of members of the PRPB and the public.

14. On November 30, 2020, the PRPB submitted a report to the Office of the Federal Monitor. Page 8 of the report shows that the San Sebastian District was closed on November 19, 2020. *See*, Exhibit 5.

15. The PRPB is willing to provide the Special Master with any information deemed appropriate and relevant to substantiate the above.

16. The Special Master also notes precinct Covid-19 Coordinators are selected by the local area commanders without taking into consideration particular qualification requirements and with little or no formal training on the subject.

17. On September 21, 2020, the PRPB offered a workshop through the “Team” platform to Covid-19 Coordinators, on the following subjects: *Discussion of the Covid-19 Protocol (April 2020); How the virus affects your body; Symptoms; Risk factors; Medical Complications; Behavior of the immune system; When it is better to perform the test after exposure, and Criteria to identify direct contact*. *See*, Exhibit 6.

18. Also, the PRPB staff medical surgeon, in coordination with the Department of Health, is presently scheduling another workshop in relation to the Covid-19 virus, to further improve the knowledge of the Coordinators and empower them in better executing their duties and responsibilities as coordinators.

19. Therefore, the PRPB strongly believes it has implemented, and will continue to implement, the right processes to protect the PRPB force by maintaining capable, competent, and resilient Covid-19 Coordinators.

20. The PRPB now addresses the recommendations proposed by the Special Master.

21. With respect to first recommendation issued by the Special Master, about 2 weeks ago the PRPB took the initiative to review the Covid-19 Protocol to further refine the information contained therein to the processes that have been evolving according to the regulations and guidance issued by the United States Centers for Disease Control and Prevention (CDC) and the Puerto Rico Department of Health (PR DoH). The PRPB expects to have a final revision of the Covid-19 Protocol on or about December 22, 2020. The document will be distributed to the Special Master, the Office of the Federal Monitor, and the United States Department of Justice for their review and comment consistent with the Agreement for Sustainable Reform.

22. Regarding the second recommendation, the PRPB Office of Reform delivers monthly progress reports on the work of the Covid-19. Since April 2020, these progress reports have been provided to the Special Master, the Office of the Federal Monitor, and the United States Department of Justice. The PRPB is willing to enlarge the monthly progress reports by adding the type of personal protective equipment to be distributed among the various PRPB police districts. The PRPB, however, opposes the Special Master's recommendation that it be allowed to lead PRPB Office of Reform efforts, retain the necessary personnel, for the immediate and complete assessment on the implementation of the PRPB Covid-19 Protocol. The PRPB strongly believes these responsibilities lie with the Bureau and not with the Special Master.

23. In regards to the third recommendation, the PRPB wishes to inform that on August 5, 2020, the Bureau submitted to the Puerto Rico Department of Public Safety (DPS) a request for the contracting of a medical professional to further assist with the enforcement of a Covid-19 Protocol. The PRPB is awaiting a response from DPS. Further, the PRPB has strictly followed all the instructions issued by the PR DoH. For example, consultations have been made to a group of other health-related professionals such as epidemiologists. Further, the PRPB staff medical officer has received continued medical training on the Covid-19 virus from the Puerto Rico College of Physicians and Surgeons. On November 30, 2020, she completed a Seminar on the subject of vaccinations, which was sponsored the PR DoH Biosafety Office.

24. The PRPB concurs with recommendation number four. The Bureau's staff medical officer will oversee the PRPB's efforts and will ensure the Covid-19 Coordinators receive such training.

25. Lastly, the PRPB concurs with the Special Master's fifth recommendation.

WHEREFORE, the Defendants very respectfully request the Court to take notice of the matters discussed above.

In San Juan, Puerto Rico, this 9th day of December, 2020.

s/Raúl E. Bandas
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CERTIFICATE OF SERVICE

I hereby certify that on this date I electronically filed the foregoing Motion Requesting Reconsideration of Order with the Clerk of the Court, using the CM/ECF System, which will send notification of such filing to all appearing parties and counsels using the Court's electronic system.

In San Juan, Puerto Rico, this 9th day of December 2020.

s/Raúl E. Bandas
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Counsel for Defendants